

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms**

27 CFR Parts 19, 24, 25, 53, 70, 250, 270, 275 and 285

[T.D. ATF-365]

RIN 1512-AB39

Implementation of Public Law 103-465, Section 712, Time for Payment and Deposits of Certain Excise Taxes (No. 277)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule implements section 712 of Public Law 103-465, "The Uruguay Round Agreements Act." The new law changed payment and deposit requirements for certain excise taxes. These regulations implement the law by incorporating the accelerated payment period for taxes or deposits due on distilled spirits, wine, beer, tobacco products and cigarette papers and tubes and firearms and ammunition for the period September 16-September 26 (or September 25, for non-electronic fund transfer (EFT) taxpayers). Payment of taxes for this period is due on September 29 (or September 28, for non EFT taxpayers). This temporary rule also amends regulations in 27 CFR Part 53, relating to the requirements for making deposits of firearms and ammunition excise taxes, by simplifying existing deposit rules in order to maintain consistency with other manufacturers excise taxes administered by the Internal Revenue Service (IRS). Finally, the temporary rule adds provisions relating to records and variances and makes other technical amendments to the regulations in 27 CFR Part 53. In the Proposed Rules section of this **Federal Register**, ATF is also issuing a notice of proposed rulemaking inviting comments on the temporary rule for a 90-day period following the publication of this temporary rule.

EFFECTIVE DATES: The temporary regulations are effective January 1, 1995, except for section 53.159, which is effective July 1, 1995.

ADDRESSES: Send written comments to: Chief, Alcohol and Tobacco Programs Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221.

FOR FURTHER INFORMATION CONTACT: Tamara Light, Alcohol and Tobacco

Programs Division, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1994, P.L. 103-465 (108 Stat. 4809) was enacted, amending the law relating to the payment and deposit of certain excise taxes. Federal excise taxes are imposed on firearms and ammunition, alcoholic beverages, and tobacco products. For the majority of these taxpayers, excise taxes must be remitted to ATF on a semimonthly basis within a 9-14 day period after the end of the semimonthly period. In order to receive these taxes during the fiscal year to which they relate, rather than in the subsequent fiscal year, P.L. 103-465 accelerates the due date for payment or deposit of such taxes for the second semimonthly period of September.

Alcohol and Tobacco Excise Taxes

With certain exceptions, the taxes on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, are paid on the basis of a semimonthly return. The semimonthly periods covered by the tax return are from the 1st day through the 15th day of each month and from the 16th day of each month to the last day of that month. The return must be filed and the taxpayment must be made no later than the 14th day after the last day of each semimonthly period.

The amendments to the regulations covering distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes establish the accelerated period required by P.L. 103-465 by dividing the second semimonthly period in September into two payment periods, beginning from the 16th day through the 26th day, and from the 27th day through the 30th day. The return and taxpayment for the period September 16-26 are due on or before September 29. The return and taxpayment for the period September 27-30 are due on or before October 14. The accelerated payment period does not apply to wine excise taxes that are remitted on an annual basis.

Safe Harbor Rule

The amendments to the law specifically provide that, in the case of taxes on distilled spirits, wine, beer, tobacco products, and cigarette papers and tubes, the accelerated payment requirement will be met if the taxpayer pays not later than September 29 an amount equal to 11/15th (73.3 percent) of the taxpayer's liability for the first semimonthly period in September. This "safe harbor" provision is implemented

in the regulations at §§ 19.523(c)(2), 24.271(c)(2), 25.164a(b), 250.112(d), 270.164(b), 275.114(b)(3) and 285.25(g)(3).

Special Rule for Taxpayers Not Required to Remit Taxes by Electronic Fund Transfer

The law provides special rules for taxpayers who are not required to remit taxes by electronic fund transfer for the calendar year. For those taxpayers, payment of taxes for the period September 16-September 25 are due on or before September 28. The regulations implementing this requirement provide that the requirement to pay tax for this period is satisfied if the taxpayer pays an amount equal to 2/3 (66.7 percent) of the taxpayer's liability for the first semimonthly period in September.

Last Day for Making Payment

The amendments to the law revise, in part, the special rules for due dates falling on, Saturday, Sunday, or legal holidays as defined in 26 U.S.C. 7503. The amendment relating to due dates falling on Sunday applies only to the accelerated return period in September. If the required due date for the accelerated payment period falls on a legal holiday or Saturday, taxpayment is due on the immediately preceding day, and as amended, if the required due date for the accelerated payment period falls on a Sunday, taxpayment is due on the following Monday. These amendments are reflected in the regulations at §§ 19.523(c)(3), 24.271(c)(3), 25.164a(c), 70.306(a), 250.112(d), 270.164(c), 275.114(b)(4), and 285.25(g)(4).

Firearms and Ammunition Excise Taxes

Current regulations require taxpayers who incur more than \$100 in tax liability for any calendar month (except the last month of the quarter) to make monthly deposits on ATF Form 5300.27, Federal Firearms and Ammunition Excise Tax Deposits. Monthly deposits are due by the last day of the month following the month in which the \$100 liability was incurred.

Taxpayers who incur more than \$2,000 of tax liability for any calendar month in the preceding calendar quarter are required to make semimonthly deposits for the current calendar quarter on ATF Form 5300.27. Deposits of tax for a semimonthly period generally must equal the amount of tax liability incurred during that semimonthly period. However, current regulations provide four exceptions to this rule. Taxpayers may use one of these exceptions in computing the amount of

tax required to be deposited. Each of the four exceptions requires the taxpayer to estimate and deposit an amount of tax based on certain percentages and requirements prescribed by the particular exception. Semimonthly deposits are due by the ninth day of the semimonthly period following the semimonthly period in which the tax was incurred.

Further, semimonthly depositors must deposit any underpayment of tax for the first and second month of the quarter by the ninth day of the second month following the month in which the tax liability was incurred. Any underpayment of tax for the third month of the quarter which exceeds \$100 must be deposited by the last day of the first month following the end of the quarter.

P.L. 103-465 Amendments to the Requirement for Making Deposits

In the case of firearms and ammunition excise taxes required to be remitted on a semimonthly basis, P.L. 103-465 requires an accelerated payment for the period September 16-September 25. The due date for deposit of taxes incurred during this period is September 28. These dates apply because the firearms and ammunition excise taxes are not required to be made by electronic fund transfer. Taxes incurred for the remainder of the semimonthly period, September 26-30, are due on October 9. The amendments to the law enact a special rule where the due date of the deposit falls on Saturday or Sunday. If the required due date for the accelerated payment period falls on a Saturday, taxpayment is due on the preceding Friday. If the required due date for the accelerated payment period falls on a Sunday, taxpayment is due on the following Monday. For due dates falling on a legal holiday, the general rule under 26 U.S.C. 7503 continues to apply, and the deposit is due on the day succeeding the legal holiday.

Simplification of Deposit Rule

This temporary rule modifies current regulations in 27 CFR Part 53 which provide a number of different methods for determining whether a taxpayer has complied with the semimonthly deposit rules. This temporary rule reduces the number of those rules, thereby simplifying the deposit system. The rule also complies with the congressional mandate that ATF modify existing regulatory safe harbors to reflect the accelerated taxpayment period. The legislative history for P.L. 103-465 states that both Congress and the Administration "expected that the Treasury Department will modify existing safe harbors relating to excise

deposits to reflect these changes." See, H.R. Rep. No. 103-826 (I), 103rd Cong., 2nd Sess. 177 (1984), and "The Uruguay Round Agreements Act Statement of Administrative Action," page 1056. This simplification of the deposit rules enables taxpayers to use clear and concise safe harbors in determining their deposits required for the accelerated period.

The amendments to the regulations eliminate the current monthly and semimonthly deposit rules in order to have a single deposit rule apply to all persons required to make deposits of tax. The new regulation at § 53.159 requires semimonthly deposits of tax from all persons required to file returns. ATF believes that by having one deposit rule apply to all persons, the system will be easier for taxpayers to understand and for ATF to administer.

Generally, under this rule, the amount of tax deposited for a semimonthly period must equal the amount of tax liability incurred during that period. However, the regulations provide the following exceptions to this rule.

Special Rule for One-time or Occasional Filings

A special rule is provided for one-time or occasional filings of returns. A person may file a one-time or occasional return reporting liability with respect to taxable transactions in a calendar quarter if the person reporting tax does not engage in any activity with respect to which tax is reportable on the return in the course of a trade or business.

In addition, no deposit is required in the case of tax reported on a one-time or occasional filing. Instead, the tax reported on a one-time or occasional filing is paid with the quarterly return.

De Minimis Exception to the Deposit Requirement

The deposit requirement provided by these amendments to the regulations will not apply if the total tax liability for the quarter does not exceed \$2,000. Instead, any tax incurred for the return period will be paid with the quarterly return.

Safe Harbor Rule

A general safe harbor rule is provided so that taxpayers required to pay firearms and ammunition excise taxes are not required to determine their actual tax liability during each semimonthly period in a quarter. The safe harbor rule allows taxpayers to deposit an estimated amount of tax based on prior liability, delaying calculation of their actual liability until the quarterly return is due. The adoption of this general safe harbor rule

facilitates the promulgation of the modified rule, discussed below, for the accelerated deposit period in September.

The safe harbor rule applies to taxpayers who filed ATF Form 5300.26, Firearms and Ammunition Excise Tax Return, reporting tax for the second calendar quarter preceding the current calendar quarter (the look-back quarter). Such persons are considered to have met the semimonthly deposit requirement for the current quarter if (1) the deposit for each semimonthly period in the current quarter is not less than $\frac{1}{6}$ of the total tax liability reported on Form 5300.26 for the look-back quarter, (2) each deposit is made on time, and (3) any underpayment for the current quarter is paid by the due date of the return on which the tax would ordinarily be reported. All three requirements must be satisfied in order for the safe harbor rule to apply.

Modification of Safe Harbor Rule Based on Look-back Quarter Liability for the Month of September

Under P.L. 103-465, deposits for the period September 16-25 are due on September 28. The deposit for the remaining 5 days, September 26-30, is due on October 9, the 9th day of the semimonthly period following the semimonthly period for which the tax is reportable. A modified safe harbor rule applies to the third calendar quarter and is met where deposit of taxes for the periods September 16-25 and September 26-30 is not less than $\frac{1}{12}$ (8.3 percent) of the tax liability reported for the look-back quarter.

Modification of Safe Harbor Rule Based on Look-back Quarter Liability to Adjust for Tax Rate Increases

Under the safe harbor rule, an increase in the rate of tax would generally not be reflected in deposits made by persons using the look-back quarter until the second quarter after the quarter for which the increased rate is effective (although the increased rate would be reflected in catch-up payments for each quarter). Therefore, the safe harbor deposit amounts for the first and second quarters beginning on or after the effective date of a tax rate increase are required to be calculated as if the new tax rate had been in effect during the look-back quarter. Thus, persons using the safe harbor rule in these quarters must deposit $\frac{1}{6}$ of the amount of liability for which they would have been liable in the look-back quarter had the higher rate applied at that time. This rule would ensure that the statutory effective date of tax rate

changes would be appropriately reflected in deposits.

Look-back quarter liability is adjusted for determining safe harbor deposit amounts only where there is a change in the law increasing the rate of tax, and not when there is some other change that would have resulted in higher taxes in the look-back quarter.

First Time Filers

In addition to the de minimis exception which applies to all taxpayers, a special rule is provided for first time filers (new return filers). First time filers do not have a look-back quarter because the filing of ATF F 5300.26, Federal Firearms and Ammunition Tax Return, other than for a one-time or occasional return under section 53.151(a)(5), has not been required. Under this special rule, a person is considered to have met the semimonthly deposit requirement if the person's deposit for each semimonthly period in the current quarter is not less than 95 percent of the total tax liability incurred during the semimonthly period, each deposit is made on time, and any underpayment for the current quarter is paid by the due date of the return on which the tax would ordinarily be reported.

Technical and Clarifying Amendments

The definition of "person" is being added to § 53.11 in order to clarify what constitutes a person for purposes of Part 53.

Section 53.22 is being amended by exempting one-time or occasional filers from the requirement of obtaining an employer identification number; instead they may use their social security number.

Section 53.23 is being added to the regulations to advise taxpayers that upon approval by the Director, they may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this part.

Section 53.24 is also being added to the regulations to impose the requirement to retain records for a period of three years.

Section 53.142 is being amended to incorporate a statutory amendment to section 4222(c), pertaining to tax-free registrations.

Section 53.152 paragraph (c) is being redesignated, as the subject matter is of an administrative nature and is more appropriately placed in a subpart governing administrative matters. As a result, § 53.152(c) is being deleted from subpart L and now appears as § 53.21(d) in subpart C.

Conforming Regulatory Changes to §§ 53.151 and 53.158

Language in §§ 53.151 and 53.158 is being amended to maintain consistency with the new deposit rule.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities or impose or otherwise cause an increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866, because the economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

Administrative Procedure Act

Because this document merely implements the law and because immediate guidance is necessary to implement the provisions of the law, it is found to be impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control numbers 1512-0467 and 1512-0509. The estimated average annual burden associated with 1512-0467 is 0.7 hours per respondent or recordkeeper, the estimated average annual burden associated with 1512-0497 is 0.25 hours per respondent or recordkeeper, and the estimated average annual burden associated with 1512-0509 is 0.21 hours per respondent or recordkeeper.

For further information concerning the collection of information, and where to submit comments on the collections of information and the accuracy of the estimated burden, and suggestions for

reducing this burden, refer to the preamble to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of this document is Tamara Light, Alcohol and Tobacco Programs Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Security measures, Spices and flavoring, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfer, Excise taxes, labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 53

Administrative practice and procedure, Arms and munitions, Authority delegations, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 250

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims,

Customs duties and inspection, Electronic fund transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 275

Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Virgin Islands, Warehouses.

27 CFR Part 285

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Excise taxes, Packaging and containers, Penalties, Seizures and forfeitures, Surety bonds, Reporting requirements.

Authority and Issuance

27 CFR Parts 19, 24, 25, 53, 70, 250, 270, 275, and 285 are amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for 27 CFR Part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 19.522 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 19.522 Taxes to be collected by returns.

(a) *Deferred taxes.* * * * Except as provided in section 19.523(c), the periods to be covered by semimonthly returns on Form 5000.24 shall run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month. * * *

* * * * *

Par. 3. Section 19.523 is amended by revising paragraph (a) and by adding new paragraph (c) to read as follows:

§ 19.523 Time for filing returns.

(a) *Payment pursuant to semimonthly return.* Where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, the proprietor shall file a semimonthly tax return covering such spirits on Form 5000.24, and remittance, as required by § 19.524 or § 19.525, not later than the 14th day after the last day of the return period, except as provided by paragraph (c) of this section. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by paragraph (c)(3) of this section.

* * * * *

(c) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1)(i) Except as provided in paragraph (c)(1)(ii) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 19.524, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (c)(1)(i) of this section, if the amount paid no later than September 29 is not less than $\frac{11}{15}$ (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph

(c)(1)(ii) of this section, if the amount paid no later than September 28 is not less than $\frac{2}{3}$ (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Last day for payment.* If the required taxpayment due date for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(4) *Example. Payment of tax for the month of September.* (i) *Facts.* X, a distilled spirits plant proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of \$30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of \$45,000, and for the period September 27–30, X incurred tax liability in the amount of \$2,000.

(ii) *Payment requirement.* X's payment of tax in the amount of \$30,000 for the first semimonthly period of September is due no later than September 29 (§ 19.522(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 19.523(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 19.523(c)(2)). Under the safe harbor rule, X's payment of tax must equal \$21,990.00, $\frac{11}{15}$ ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of \$2,000 for the period September 27–30 must be paid no later than October 14 (§ 19.523(c)(1)(i)). X must also pay the underpayment of tax, \$23,010.00, for the period September 16–26, no later than October 14 (§ 19.523(c)(2)).

PART 24—WINE

Par. 4. The authority citation for 27 CFR Part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 5. Section 24.271 is amended by revising paragraph (b) and by adding paragraph (c) to read as follows:

§ 24.271 Payment of tax by check, cash or money order.

(a) * * *

(b) *Return periods.* Except as provided for in paragraph (c) of this section and § 24.273, or where there is no tax due, return periods are from the 1st day of each month through the 15th day of that month and from the 16th day of each month through the last day of that month. The proprietor shall file returns with remittances, for each return period not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by § 24.271(c)(3).

(c) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1)(i) Except as provided in paragraph (c)(1)(ii) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(ii) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 24.272, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The proprietor shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(2) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (c)(1)(i) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph

(c)(1)(ii) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(3) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(4) *Example. Payment of tax for the month of September.* (i) *Facts.* X, a proprietor required to pay taxes by electronic fund transfer, incurred tax liability in the amount of \$30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of \$45,000, and for the period September 27–30, X incurred tax liability in the amount of \$2,000.

(ii) *Payment requirement.* X's payment of tax in the amount of \$30,000 for the first semimonthly period of September is due no later than September 29 (§ 24.271(b)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 24.271(c)(1)(i)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 24.271(c)(2)). Under the safe harbor rule, X's payment of tax must equal \$21,990.00, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of \$2,000 for the period September 27–30 must be paid no later than October 14 (§ 24.271(c)(1)(i)). X must also pay the underpayment of tax, \$23,010.00, for the period September 16–26, no later than October 14 (§ 24.271(c)(2)).

PART 25—BEER

Par. 6. The authority citation for 27 CFR Part 25 continues to read as follows:

Authority: 19 U.S.C. 81(c); 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Par. 7. Section 25.163 is amended by revising the first sentences as follows:

§ 25.163 Method of tax payment.

A brewer shall pay the tax on beer by return on Form 5000.24, as provided in §§ 25.164, 25.164a, 25.173, and 25.175. * * *

Par. 8. Section 25.164 is amended by revising paragraphs (c) and (d) to read as follows:

§ 25.164 Semimonthly return

* * * * *

(c) *Return periods.* Except as provided in § 25.164a, return periods run from the brewer's business day beginning on the first day of each month through the brewer's business day beginning on the 15th day of that month, and from the brewer's business day beginning on the 16th day of the month through the brewer's business day beginning on the last day of the month.

(d) *Time for filing returns and paying tax.* Except as provided in § 25.164a the brewer shall file the semimonthly tax return, Form 5000.24, for each return period, and make remittance as required by this section, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by § 25.164a(c).

* * * * *

Par. 9. Section 25.164a is added to read as follows:

§ 25.164a Special Rule for taxes due for the month of September (effective after December 31, 1994).

(a)(1) Except as provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 25.165, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The brewer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The brewer shall file a return on Form

5000.24, and make remittance, for the period September 26–30, no later than October 14.

(b) *Amount of payment: Safe harbor rule.* (1) Taxpayers are considered to have met the requirements of paragraph (a)(1) of this section, if the amount paid no later than September 29 is not less than $\frac{11}{15}$ (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(2) Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section, if the amount paid no later than September 28 is not less than $\frac{2}{3}$ (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(d) *Example. Payment of tax for the month of September.* (1) *Facts.* X, a brewer required to pay taxes by electronic fund transfer, incurred tax liability in the amount of \$30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of \$45,000, and for the period September 27–30, X incurred tax liability in the amount of \$2,000.

(2) *Payment requirement.* X's payment of tax in the amount of \$30,000 for the first semimonthly period of September is due no later than September 29 (§ 25.164(d)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 25.164a(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 25.164a(b)). Under the safe harbor rule, X's payment of tax must equal \$21,990.00, $\frac{11}{15}$ ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of \$2,000 for the period September 27–30 must be paid no later than October 14 (§ 25.164a(a)(1)). X must also pay the underpayment of tax, \$23,010.00, for the period September 16–26, no later than October 14 (§ 25.164a(b)).

PART 53—MANUFACTURERS EXCISE TAXES—FIREARMS AND AMMUNITION

Par. 10. The authority citation for 27 CFR Part 53 is revised to read as follows:

Authority: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416, 7502.

Par. 11. Section 53.11 is amended by adding the definition of the term “Person” to read as follows:

§ 53.11 Meaning of terms.

* * * * *

Person. An individual, trust, estate, partnership, association, company, or corporation. When used in connection with penalties, seizures, and forfeitures, the term includes an officer or employee of a corporation, or a member or employee of a partnership, who as an officer, employee or member, is under a duty to perform the act in respect of which the violation occurs.

* * * * *

§§ 53.22 and 53.152 [Amended]

Par. 12. Section 52.152(c) is redesignated as section 53.21(d).

Par. 13. Section 53.22 is amended by revising the first sentence of paragraph (a)(1) and by adding paragraph (a)(3) to read as follows:

§ 53.22 Employer identification number.

(a) * * *

(1) Except for one-time or occasional filers, every person who makes a sale or use of an article with respect to which a tax is imposed by section 4181 of the Code, and who has not earlier been assigned an employer identification number or has not applied for one, shall make an application on Form SS–4 for an employer identification number.

* * * * *

(3) *One-time or occasional filers.* A person who files a return under the provisions of section 53.151(a)(5) is not required to make application for an employer identification number. Such persons may use their social security number on any return, statement or other document submitted to ATF by that person in lieu of an employer identification number.

* * * * *

Par. 14. Sections 53.23 and 53.24 are added to read as follows:

§ 53.23 Alternate methods or procedures.

(a) A taxpayer, on specific approval by the Director as provided in this section, may use an alternate method or procedure in lieu of a method or

procedure specifically prescribed in this part. The Director may approve an alternate method or procedure, subject to stated conditions, when—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue; and

(3) The alternate method or procedure will not be contrary to any provision of law and will not result in an increase in cost to the Government or hinder the effective administration of this part. No alternate method or procedure relating to the assessment, payment, or collection of tax shall be authorized under this paragraph.

(b) Where the taxpayer desires to employ an alternate method or procedure, a written application to do so shall be submitted to the regional director for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The taxpayer shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be withdrawn whenever, in the judgment of the Director, the revenue is jeopardized or the effective administration of this part is hindered by the continuation of such authorization.

§ 53.24 Records.

(a) *In general—(1) Form of records.* The records required by the regulations in this part shall be kept accurately, but no particular form is required for keeping the records. Such forms and systems of accounting shall be used as will enable an ATF officer to ascertain whether liability for tax is incurred and, if so, the amount thereof.

(2) [Reserved]

(b) *Copies of returns, schedules, and statements.* Every person who is required, by the regulations in this part or by instructions applicable to any form prescribed thereunder, to keep any copy of any return, schedule, statement, or other document, shall keep such copy as a part of the records.

(c) *Records of claimants.* Any person who, pursuant to the regulations in this part, claims a refund, credit, or abatement, shall keep a complete and

detailed record with respect to the tax, interest, addition to the tax, additional amount, or assessable penalty to which the claim relates. Such record shall include any records required of the claimant by paragraph (b) of this section and Subpart L of this part.

(d) *Place and period for keeping records.* (1) All records required by this part shall be prepared and kept by the person required to keep them, at one or more convenient and safe locations accessible to ATF officers, and shall at all times be immediately available for inspection by such officers.

(2) Except as otherwise provided in this subparagraph, every person required by the regulations in this part to keep records in respect of a tax shall maintain such records for at least three years after the due date of such tax for the return period to which the records relate, or the date such tax is paid, whichever is later. The records of claimants required by paragraph (c) of this section shall be maintained for a period of at least three years after the date the claim is filed.

(e) *Reproduction of original records.* (1) General books of account, such as cash books, journals, voucher registers, ledgers, etc., shall be maintained and preserved in their original form. However, reproductions of supporting records of details, such as invoices, vouchers, production reports, sales records, certificates, proofs of exportation, etc., may be kept in lieu of the original records. Any process may be used which accurately and timely reproduces the original record, and which forms a durable medium for reproducing and preserving the original record.

(2) *Copies of records treated as original records.* Whenever records are reproduced under this section, the reproduced records shall be preserved in conveniently accessible files, and provisions shall be made for examining, viewing, and using the reproduced records the same as if they were the original record. Such reproduced records shall be treated and considered for all purposes as though they were the original record. All provisions of law and regulations applicable to the original record are applicable to the reproduced record.

Par. 15. Section 53.142 is amended by revising the section heading, the introductory text of paragraph (a), and paragraphs (a)(4) and (b) to read as follows:

§ 53.142 Denial, revocation or suspension of registration.

(a) The regional director is authorized to deny, revoke or temporarily suspend,

upon written notice, the registration of any person and the right of such person to sell or purchase articles tax free under section 4221 of the Code in any case in which he finds that:

(4) Such denial, revocation, or suspension is necessary to protect the revenue; or

(b) The denial, revocation, or suspension of registration is in addition to any other penalty that may apply under the law for any act or failure to act.

Par. 16. Section 53.151 is amended by revising the last sentence of paragraph (a)(2), by adding a new paragraph (a)(5), and by revising paragraph (b)(1) to read as follows:

§ 53.151 Returns.

(a) In general. * * *

(2) *Return periods after September 30, 1992.* * * * Except as provided in paragraph (a)(5) of this section, every person required to make a return on ATF Form 5300.26 who does not incur any firearms and ammunition excise tax liability for the entire calendar year and who has not filed a final return in accordance with § 53.152 shall file an annual return on ATF Form 5300.26.

(5) *Special rule for one-time or occasional filings for return periods on or after July 1, 1995.* One-time or occasional filers are not required to file quarterly or annual returns pursuant to paragraph (a)(2) of this section if the person reporting tax does not engage in any activity with respect to which tax is reportable on the return in the course of a trade or business. Such persons shall file and pay tax for periods only when liability is incurred. See § 53.159(b)(2), providing that a deposit of taxes is not required for a one-time or occasional filing.

(b) *Monthly and semimonthly returns.*—(1) *Requirement.* If the regional director determines that any taxpayer who is required to deposit taxes under the provision of §§ 53.157 or 53.159 has failed to make deposits of those taxes, the taxpayer shall be required, if so notified in writing by the regional director, to file a monthly or semimonthly return on ATF Form 5300.26. Every person so notified by the regional director shall file a return for the calendar month or semimonthly period in which the notice is received and for each calendar month or semimonthly period thereafter until the person has filed a final return in accordance with § 53.152 or is required to file returns on the basis of a different

return period pursuant to notification as provided in paragraph (b)(2) of this section.

Par. 17. Section 53.157 is amended by revising the section heading and by adding a note preceding paragraph (a) to read as follows:

§ 53.157 Deposit requirement for deposits made for calendar quarters prior to July 1, 1995.

Note: For deposit requirement for deposits made for calendar quarters beginning on or after July 1, 1995, see § 53.159.

Par. 18. Section 53.158 is amended by revising the second sentences of paragraphs (b)(2) and (b)(3) to read as follows:

§ 53.158 Payment of tax by electronic fund transfer.

(b) *Requirements.* * * *

(2) * * * The request will be made to the financial institution early enough for the transfer of funds to be made to the Treasury Account no later than the close of business on the last day for making the deposit or filing the return as prescribed in §§ 53.157 or 53.159, and 53.153. * * *

(3) * * * Taxpayers electing to discontinue making remittances by EFT shall remit the tax with the next deposit or return as prescribed in §§ 53.157 or 53.159, and 53.151 for remittances not made by EFT and notify the regional director by attaching a written notification to the tax deposit form or return stating that remittance of firearms and ammunition excise taxes will no longer be made by EFT.

Par. 19. Section 53.159 is added to read as follows:

§ 53.159 Deposit requirement for deposits made for calendar quarters beginning on or after July 1, 1995.

(a) *Definitions*—

(1) *Definition of tax liability.* For purposes of this section, the term “tax liability” means the total tax liability for the specified period plus or minus any allowable adjustments made in accordance with the instructions applicable to the form on which the return is made.

(2) *Semimonthly period.* Except as provided in paragraph (c)(4)(ii) of this section, the term “semimonthly period” means the first 15 days of a calendar month or the remaining portion of a calendar month following the 15th day of that month.

(b) *In general*—(1) *Semimonthly deposits.* Except as provided in paragraphs (b)(2), (c)(2), and (j) of this

section, any person required to file a quarterly excise tax return on ATF Form 5300.26 must make a deposit of tax for each semimonthly period as prescribed in paragraph (c) of this section.

(2) *One-time or occasional filings.* No deposit is required in the case of any taxes reportable on a one-time or occasional filing (as defined in § 53.151(a)(5)).

(c) *Amount of deposit*—(1) *In general.* Except as provided in paragraphs (c)(2), (c)(3) and (c)(6) of this section, the deposit of tax for each semimonthly period must be equal to the amount of tax liability incurred during that semimonthly period. Except as provided in paragraph (c)(3) of this section, no deposit is required for any semimonthly period in which no tax liability is incurred.

(2) *De minimis exception.* Except as provided in paragraph (c)(3) of this section, any person who has a tax liability for the current calendar quarter of \$2,000 or less is not required to make deposits for that quarter. However, semimonthly deposits of tax are required beginning with the semimonthly period in which unpaid tax liability exceeds \$2,000 and for every semimonthly period thereafter in which tax liability is incurred. The first deposit for the current quarter shall be equal to the unpaid tax liability; thereafter, deposits shall be equal to the amount of tax liability incurred during that semimonthly period.

(3) *Amount of deposit; safe harbor rule based on look-back quarter liability.* *In general.* Except as provided in paragraph (c)(6) of this section, any person who made a return of tax on ATF Form 5300.26 reporting taxes for the second preceding calendar quarter (the "look-back quarter"), or who did not file a return for the look-back quarter because of the provisions of § 53.151(a)(2), is considered to have complied with the requirement for deposit of taxes for the current calendar quarter if—

(i) The deposit of taxes for each semimonthly period in the current calendar quarter is an amount equal to not less than 1/6 (16.67 percent) of the total tax liability incurred for the look-back quarter;

(ii) Each deposit is made on time; and

(iii) The amount of any underpayment of taxes for the current calendar quarter is paid by the due date of the return.

(4) *Modification for third calendar quarter.* The safe harbor rule in paragraph (c)(3) of this section does not apply for the third calendar quarter unless—

(i) the deposit of taxes for the semimonthly period July 1–September

15 meets the requirements of paragraph (c)(3) of this section; and

(ii) each deposit of taxes for the periods September 16–25 and September 26–30 is not less than 1/12th (8.34 percent) of the total tax liability incurred for the look-back quarter.

(5) *Modification for tax rate increase.*

(i) *Application.* The safe harbor rule as prescribed in paragraph (c)(3) is modified for the first and second calendar quarters beginning on or after the effective date of an increase in the rate of any tax prescribed by 26 U.S.C. 4181 to which this part 53 applies.

(ii) *Modification.* The amount of deposit for calendar quarters referred to in paragraph (c)(3) of this section must be adjusted so that the deposit of taxes for each semimonthly period in the calendar quarter is not less than 1/6 (16.67 percent) of the tax liability the person would have had with respect to the tax for the look-back quarter if the increased rate of tax had been in effect for that look-back quarter.

(6) *First time filers.* Any person who did not file a return of tax on ATF Form 5300.26 for the first and second preceding calendar quarters because they were not engaged in any activity with respect to which tax is reportable on the return in the course of a trade or business, is considered to have complied with the requirement for deposit of taxes for the current calendar quarter if—

(i) The deposit of taxes for each semimonthly period in the calendar quarter is not less than 95 percent of the tax liability incurred with respect to those taxes during the semimonthly period;

(ii) Each deposit is made on time; and

(iii) The amount of any underpayment of taxes for the current calendar quarter is paid by the due date of the return.

(d) *Failure to comply with deposit requirements.* (1) If a person fails to make deposits as required under this part, the regional director may withdraw the person's right to use the safe harbor rule provided by paragraph (c)(3) of this section.

(2) *Cross reference.* The regional director may also require a taxpayer who fails to make deposits of tax to file a monthly or semimonthly return, see § 53.151(b)(1).

(e) *Time for making deposit.* Except for deposits for the period September 16–25, each deposit required to be made by this section shall be made not later than the 9th day of the semimonthly period following the close of the period for which it is made. The deposit for the period September 16–25 shall be made not later than September 28. The

deposit for the period September 26–30, is due not later than October 9.

(f) *Last day for filing.* (1) Except as provided by paragraph (f)(2) of this section, if the due date of the deposit falls on a Saturday, Sunday, or legal holiday, the deposit and remittance shall be due on the next succeeding day which is not a Saturday, Sunday, or legal holiday. For purposes of this section, "legal holiday" is defined by section 7503 of the Code and 27 CFR 70.306(b) of this chapter.

(2) If the required due date of the deposit for the period September 16–25 falls on a Saturday, the deposit and remittance shall be due on the preceding day. If such required due date falls on a Sunday, the return and remittance shall be due on the following day.

(g) *Forms and procedures.* Each remittance of amounts required to be deposited shall be accompanied by ATF Form 5300.27, Federal Firearms and Ammunition Excise Tax Deposit form, or ATF Form 5300.26, Federal Firearms and Ammunition Excise Tax Return, which shall be prepared in accordance with the applicable instructions.

Taxpayers electing to remit deposits by EFT pursuant to § 53.158 shall prepare and submit ATF Form 5300.26 or ATF Form 5300.27 in accordance with the instructions contained in ATF Procedure 92–1, Publication 5000.11. The timeliness of the deposit will be determined by the date it is received by the lockbox financial institution, or the ATF officer designated on the form accompanying the deposit, or the Treasury Account, when made by EFT. In order for deposits of less than \$20,000 made by U.S. Mail to be considered received timely, the date of mailing must be on or before the second day preceding the due date of the deposit as evidenced by the official postmark of the U.S. Postal Service stamped on the cover in which the deposit was mailed. When the postmark on the cover is illegible, the burden of proving when the postmark was made will be on the taxpayer. When the taxpayer sends the deposit by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the deposit. Any deposit of \$20,000 or more must be received by the last day prescribed for making such deposit, regardless of when mailed. Amounts deposited pursuant to this paragraph shall be considered to be paid on the last day prescribed for filing the return in respect of the tax (determined without regard to any extension of time for filing the returns),

or at the time deposited, whichever is later.

(h) *Number of remittances.* A person required by this section to make deposits shall make one deposit for a semimonthly period.

(i) *Procurement of prescribed forms.* Copies of the Federal Firearms and Ammunition Excise Tax Deposit form will be furnished, so far as possible, to persons required to make deposits under this section. Such a person will not be excused from making a deposit however, by the fact that no form has been furnished. A person not supplied with the form is required to obtain the form in ample time to make the required deposits within the time prescribed. Copies of the Federal Firearms and Ammunition Excise Tax Deposit form may be obtained by request from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153-5950.

(j) *Taxpayers required to file monthly or semimonthly returns.* This section does not apply to taxes for:

(1) Any month or semimonthly period in which the taxpayer receives notice from the regional director pursuant to section 53.151(b) to file ATF Form 5300.26; or

(2) Any subsequent month or semimonthly period for which a return on ATF Form 5300.26 is required.

(3) Taxpayers required to file monthly returns shall make semimonthly deposits of 100 percent of the liability incurred during each semimonthly period by the 9th day of the month following the last day of the semimonthly period. Taxpayers required to file semimonthly returns shall pay any tax due for the semimonthly period with each return.

(k) *Examples.*

Example 1. One-time filing or occasional filing. (1) *Facts.* On October 18, 1995, A, an individual who lives in the United States purchases a custom made rifle outside the United States and imports it into the United States. A uses the rifle on October 20, 1995. A is liable for the firearms excise tax imposed by sections 4181 and 4218(a). Since A does not regularly sell rifles in arm's length transactions, a constructive sale price of \$20,000 is determined (§ 53.115(b)). The amount of A's tax liability is \$2200, 11 percent of the constructive sale price of the rifle. The liability is incurred during the fourth calendar quarter of 1995, the quarter during which the rifle is used (§ 53.111(d)). A did not import the rifle in the course of its trade or business and does not engage in any activities with respect to which tax is reportable on ATF Form 5300.26 in the course of a trade or business.

(2) *Filing requirement.* A must file a return on Form 5300.26 (§ 53.151(a)) for the fourth calendar quarter of 1995 reporting A's \$2200 firearms excise tax liability. The Form 5300.26 is due by January 31, 1996, the last

day of the first month following the calendar quarter (§ 53.153(a)). Because A did not import the firearm in the course of its trade or business and does not engage in any activities with respect to which tax is reportable in the course of a trade or business, the return is a one-time filing or occasional filing.

(3) *Payment requirement.* Because A's Form 5300.26 is a one-time filing, A is not required to make deposits of tax (§ 53.159(b)(2)). Instead, A pays the \$2200 of tax with the return.

Example 2. Deposit requirement; based on look-back quarter liability. (1) *Facts.* B is a manufacturer of firearms. B sells 75 pistols which have a taxable sale price of \$500 each during the second calendar quarter of 1996. B sold 50 of the pistols in the first semimonthly period of May, 1996, and the other 25 pistols in the second semimonthly period of April, 1996. B did not incur tax liability in any other semimonthly period in the second quarter. The amount of B's tax liability for the second calendar quarter is \$3,750, 10 percent of the taxable sale price of the pistols. B filed Form 5300.26 for the second preceding calendar quarter, the look-back quarter, on January 31, 1996 reporting tax liability in the amount of \$2,700.

(2) *Deposit requirement.* B is required to make deposits of tax for each semimonthly period in the calendar quarter because B has incurred more than \$2,000 in liability for the current quarter. B may use the safe harbor rule based on look-back quarter liability to determine the amount of the required deposits (§ 53.159(c)(3)). Under this safe harbor rule, B's deposit for each semimonthly period must equal at least \$450.00, 1/6 (16.67 percent) of the tax liability incurred for the look-back quarter. B's deposit must be timely and B must pay the amount of any underpayment by the due date of the return. Accordingly, B meets the deposit requirement if B makes the following deposits:

Semimonthly period	Deposit due by	Amount of deposit
April 1-15	April 24, 1996 .	\$450.00
April 16-31	May 9, 1996	450.00
May 1-15	May 24, 1996 ..	450.00
May 16-30	June 10, 1996 .	450.00
June 1-15	June 24, 1996 .	450.00
June 16-30	July 9, 1996	450.00

The deposit due on June 10, 1996, would ordinarily be due on June 9, 1996. However, because June 9, 1996 is a Sunday, under section 7503, B has an additional day to make the required deposit.

(3) *Filing requirement.* B must file a return on Form 5300.26 for the second calendar quarter of 1996 reporting B's \$3750 tax liability (§ 53.151(a)). The form 5300.26 is due by July 31, 1996, the last day of the first month following the calendar quarter (§ 53.153(a)). B must also pay \$1050.00, the underpayment amount by which the total tax liability for the second calendar quarter exceeds the total tax liability for the look-back quarter, by the due date of the return.

Example 3. Deposit amount; no liability in look-back quarter. (1) *Facts.* C, a

manufacturer of ammunition, filed returns for the first, second and third quarters of 1995 reporting C's tax liability. During the fourth quarter of 1995, C did not make any taxable sales of shells or cartridges, thereby incurring no tax liability for that return period. C did not file Form 5300.26 for the fourth calendar quarter since no tax liability was incurred (§ 53.151(a)(2)). C made taxable sales in the second quarter of 1996 amounting to \$25,500.00, incurring a tax liability of \$2805.

(2) *Deposit requirement.* Ordinarily, C would be required to make deposits of tax for each semimonthly period in the calendar quarter because C's total liability for the current calendar quarter exceeds \$2,000. However, since C incurred a tax liability of \$0 in the second preceding calendar quarter (the look-back quarter) (§ 53.159(c)(3)), under the safe harbor rule, C is not required to make deposits of tax.

(3) *Filing requirement.* C is required to file a return on Form 5300.26 reporting C's \$2805 ammunition excise tax liability. The form 5300.26 is due by July 31, 1996.

(4) *Payment requirement.* C must pay the \$2805 tax with the return.

Example 4. Deposit requirement; First time Filer. (1) *Facts.* D, a manufacturer of firearms, began business on 2/16/96. D sold 300 shotguns which had a taxable sales price of \$210 each during the first quarter of 1996. D sold 70 shotguns in the second semimonthly period of February, 1996, 130 shotguns in the first semimonthly period of March, 1996 and 100 shotguns in the second semimonthly period of March, 1996. The amount of D's tax liability for the first quarter of 1996 is \$6,930, 11 percent of the taxable sale price of the shotguns.

(2) *Deposit requirement.* D is required to make a deposit of tax when D's tax liability exceeds \$2,000 (§ 53.159(c)(2)). Therefore, D must make a deposit of tax beginning with the first semimonthly period in March, the semimonthly period in which D's unpaid tax liability exceeded \$2,000. Because D, a first time filer, does not have an established look-back quarter, D's deposit of tax must be at least 95 percent of the incurred tax liability. D is required to make deposits of at least 95 percent of incurred tax liability for every semimonthly period in the quarter thereafter. D's deposits must be timely and any underpayment of tax must be paid by the due date of the return. Accordingly, D meets the deposit requirement if D makes the following deposits:

Semimonthly period	Deposit due by	Amount of deposit
Feb. 16-29	March 11, 1996	\$0
March 1-15	March 25, 1996	4,389
March 16-31 ...	April 9, 1996 ...	2,194.50

The deposits due on March 11, 1996, and March 25, 1996, would ordinarily be due on March 9, 1996, and March 24, 1996, respectively. However, because March 9, 1996, is a Saturday, and March 24, 1996, is a Sunday, under section 7503, D has until March 11, 1996, to make the deposit due on March 9, 1996, and until March 25, 1996, to make the deposit due on March 24, 1996.

(3) *Filing requirement.* D must file a return on Form 5300.26 for the first calendar quarter of 1996 reporting D's \$6,930 tax liability (§ 53.151(a)). The form 5300.26 is due by April 30, 1996, the last day of the first month following the calendar quarter (§ 53.153(a)). D must also pay \$346.50, the amount by which the tax liability for the quarter was underpaid, by the due date of the return.

Example 5. Deposit amount; third calendar quarter. (1) *Facts.* E, a manufacturer of firearms, is a semimonthly depositor who makes deposits of tax using the safe harbor rule based on the look-back quarter to determine the amount of tax required to be deposited for the third calendar quarter of 1995. E incurred a tax liability amounting to \$38,000 for the third quarter. E filed Form 5300.26 for the second preceding calendar quarter, the look-back quarter on May 1, 1995, reporting tax liability in the amount of \$30,000.

(2) *Deposit requirement.* Because E has incurred more than \$2,000 in liability and has chosen to make deposits of tax based on the look-back quarter, E is required to make deposits of tax equal to \$5,000, 1/6 (16.67 percent) of the tax liability incurred in the look-back quarter, for each semimonthly period in the calendar quarter. However, because of the special rule which modifies the safe harbor rule for deposits of tax for the month of September (§ 53.159(c)(4)), E must make deposits equal to \$2500.00 each, 1/12th (8.34 percent) of the tax liability incurred in the look-back quarter for the periods September 16–25 and September 26–30. E's deposits must be timely and E must pay the amount of any underpayment by the due date of the return. Accordingly, E meets the deposit requirement if E makes the following deposits:

Semimonthly period	Deposit due by	Amount of deposit
July 1–15	July 24, 1995 ..	\$5000.00
July 16–31	August 9, 1995	5000.00
Aug. 1–15	August 24, 1995.	5000.00
Aug. 16–31	Sept. 11, 1995	5000.00
Sept. 1–15	Sept. 25, 1995	5000.00
Sept. 16–25	Sept. 28, 1995	2500.00
Sept. 26–30	October 9, 1995.	2500.00

The deposits due on September 11, 1995, and September 25, 1995, would ordinarily be due on September 9, 1995, and September 24, 1995, respectively. However, because September 9, 1995, is a Saturday, and September 24, 1995, is a Sunday, under section 7503, D has until September 11, 1995, to make the deposit due on September 9, 1995, and until September 25, 1995, to make the deposit due on September 24, 1995.

(3) *Filing requirement.* E must file a return on Form 5300.26 for the third calendar quarter of 1995 reporting E's \$38,000 tax liability (§ 53.153(a)). E must also pay \$8,000, the underpayment amount by which the total tax liability for the third calendar quarter exceeds the total tax liability for the look-back quarter, by the due date of the return.

PART 70—PROCEDURE AND ADMINISTRATION

Par. 20. The authority citation for 27 CFR Part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5376, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

Par. 21. Section 70.306 paragraph (a) is amended by revising the last sentence to read as follows:

§ 70.306 Time for performance of acts other than payment of tax or filing of any return where last day falls on Saturday, Sunday or legal holiday.

(a) * * * For rules concerning the payment of any tax or filing of any return required under the authority of 26 U.S.C. subtitle E relating to alcohol, tobacco and certain other excise taxes, see 26 U.S.C. §§ 5061 and 6302 and the regulations covering the specific commodity.

* * * * *

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Par. 22. The authority citation for 27 CFR Part 250 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 23. Section 250.112 is amended by revising paragraphs (b) and (d) and the last sentence of (c)(1) to read as follows:

§ 250.112 Returns for semimonthly periods.

* * * * *

(b) *Periods.* Except as provided for in paragraph (d) of this section, the periods to be covered by returns on ATF Form 5000.24 shall be semimonthly; such periods to run from the 1st day through the 15th day of each month and from the 16th day through the last day of each month.

(c) * * *

(1) * * * If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by paragraph (d) of this section.

* * * * *

(d) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1) The second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 250.112a, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The taxpayer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (d)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (d)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(4) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the

return and remittance shall be due on the immediately following day.

* * * * *

PART 270—MANUFACTURER OF TOBACCO PRODUCTS

Par. 24. The authority citation for 27 CFR Part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 25. Section 270.163 is revised to read as follows: § 270.163 Semimonthly tax return periods.

Except as provided in section 270.164, the periods to be covered by semimonthly tax returns shall be from the 1st day of each month through the 15th day of that month and from the 16th day of each month through the last day of that month.

Par. 26. Section 270.164 is added to read as follows:

§ 270.164 Special rule for taxes due for the month of September (effective after December 31, 1994).

(a)(1) Except as provided in paragraph (a)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 270.165a, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(b) *Amount of payment: Safe harbor rule.* (1) Taxpayers are considered to have met the requirements of paragraph (a)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax

liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(2) Taxpayers are considered to have met the requirements of paragraph (a)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(c) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

(d) *Example. Payment of tax for the month of September.*

(1) *Facts.* X, a manufacturer of tobacco products required to pay taxes by electronic fund transfer, incurred tax liability in the amount of \$30,000 for the first semimonthly period of September. For the period September 16–26, X incurred tax liability in the amount of \$45,000, and for the period September 27–30, X incurred tax liability in the amount of \$2,000.

(2) *Payment requirement.* X's payment of tax in the amount of \$30,000 for the first semimonthly period of September is due no later than September 29 (§ 270.165(a)). X's payment of tax for the period September 16–26 is also due no later than September 29 (§ 270.164(a)(1)). X may use the safe harbor rule to determine the amount of payment due for the period of September 16–26 (§ 270.164(b)). Under the safe harbor rule, X's payment of tax must equal \$21,990.00, 11/15ths of the tax liability incurred during the first semimonthly period of September. Additionally, X's payment of tax in the amount of \$2,000 for the period September 27–30 must be paid no later than October 14 (§ 270.164(a)(1)). X must also pay the underpayment of tax, \$23,010.00, for the period September 16–26, no later than October 14 (§ 270.164(b)).

Par. 27. Section 270.165 is amended by revising paragraph (a), removing paragraph (b) and redesignating existing paragraph (c) as paragraph (b) to read as follows:

§ 270.165 Times for filing semimonthly return.

(a) *General.* Except as provided by § 270.164, and paragraph (b) of this section, semimonthly returns on Form 5000.24 shall be filed, for each return period, not later than the 14th day after the last day of the return period. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday, except as provided by § 270.164(c).

* * * * *

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 28. The authority citation for 27 CFR Part 275 continues to read as follows:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 29. Section 275.113 is revised to read as follows:

§ 275.113 Return periods.

Except as provided by § 275.114, the periods to be covered in the semimonthly tax returns shall be from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month.

Par. 30. Section 275.114 is amended by revising paragraphs (b) and (d) to read as follows:

§ 275.114 Time for filing.

* * * * *

(b) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1) The second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The bonded manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The bonded manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic fund transfer as prescribed by § 275.115a, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The bonded

manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The bonded manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (b)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(ii) Taxpayers are considered to have met the requirements of paragraph (b)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(4) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday or legal holiday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

* * * * *

(d) *Weekends and holidays.* Except as provided in paragraph (b)(4) of this section, if the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday.

PART 285—MANUFACTURER OF CIGARETTE PAPERS AND TUBES

Par. 31. The authority citation for 27 CFR Part 285 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6302, 6402, 6404, 6676, 6806, 7011, 7212, 7325, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 32. Section 285.25 is amended by revising paragraph (c), the first sentence of paragraph (f) and adding paragraph (g) to read as follows:

§ 285.25 Return of manufacturer.

* * * * *

(c) *Semimonthly return periods.* Except as provided by paragraph (g) of this section, semimonthly return periods shall run from the 1st day of the month through the 15th day of the month, and from the 16th day of the month through the last day of the month.

* * * * *

(f) *Time for filing.* Except as provided by paragraph (g) of this section, for each semimonthly return period, the return shall be filed not later than the 14th day after the last day of the return period.

* * *

(g) *Special rule for taxes due for the month of September (effective after December 31, 1994).* (1) Except as provided in paragraph (g)(2) of this section, the second semimonthly period for the month of September shall be divided into two payment periods, from the 16th day through the 26th day, and from the 27th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–26, no later than September 29. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 27–30, no later than October 14.

(2) *Taxpayment not by electronic fund transfer.* In the case of taxes not required to be remitted by electronic

fund transfer as prescribed by § 285.27, the second semimonthly period of September shall be divided into two payment periods, from the 16th day through the 25th day, and the 26th day through the 30th day. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 16–25, no later than September 28. The manufacturer shall file a return on Form 5000.24, and make remittance, for the period September 26–30, no later than October 14.

(3) *Amount of payment: Safe harbor rule.* (i) Taxpayers are considered to have met the requirements of paragraph (g)(1) of this section, if the amount paid no later than September 29 is not less than 11/15 (73.3 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15th, and if any underpayment of tax is paid by October 14th.

(ii) Taxpayers are considered to have met the requirements of paragraph (g)(2) of this section, if the amount paid no later than September 28 is not less than 2/3rds (66.7 percent) of the tax liability incurred for the semimonthly period beginning on September 1 and ending on September 15, and if any underpayment of tax is paid by October 14.

(4) *Last day for payment.* If the required due date for taxpayment for the periods September 16–25 or September 16–26 as applicable, falls on a Saturday, the return and remittance shall be due on the immediately preceding day. If the required due date falls on a Sunday, the return and remittance shall be due on the immediately following day.

Signed: June 6, 1995.

Daniel R. Black,
Acting Director.

Approved: June 19, 1995.

John P. Simpson,
Deputy Assistant Secretary, (Regulatory,
Tariff and Trade Enforcement).
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